



Disability and Service Separation

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“DISABILITY” is a word that is foreign to our physically fit soldier lifestyle. It’s often misunderstood due to incorrect advice or opinions from leaders or peers, advice that is often given at a time when a soldier’s career is threatened and correct information is vital.

Disability and separation issues affect the soldier when an injury or medical condition is permanent and severe enough to limit job performance or deployability, raising the issue of fitness for duty. “Physical disability” includes both mental illnesses and physical conditions.

When reasonable medical care has been exhausted and the soldier’s ability to serve according to Army standards is in doubt, the treating physician, a commander or an MOS Medical Retention Board may refer the individual for a Medical Evaluation Board. The MEB is a clinical history of the patient’s care and resulting condition, prepared by the treating physician using the standards in Army Regulation 40-501.

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Medical Evaluation Board Process

The MEB does not require a hearing. Instead, the soldier is given a copy of the MEB findings for review, and the soldier has the right of rebuttal. Legal-assistance attorneys can help soldiers review medical board findings.

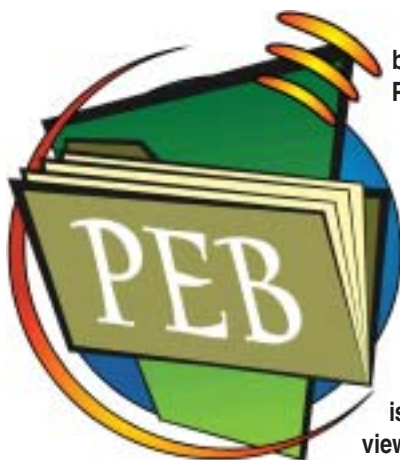
The Army’s disability program is based on federal law (Chapter 61, Title 10 of the U.S. Code) as implemented by Department of Defense Directive 1332.38, DOD Instruction 1332.18 and AR 635-40. The U.S. Army Physical Disability Agency, which has geographic regional branches known as Physical Evaluation Boards, ensures independent, impartial determinations that are free from command influence.

Army medical-treatment facilities employ Physical Evaluation Board Liaison Officers, who are usually civilian

employees who provide information to soldiers and are a conduit between the MTF and the Physical Evaluation Boards. These liaison officers are not lawyers, nor are they the soldier’s advocate or covered by attorney-client confidentiality rules.

The Physical Evaluation Board, or PEB — which includes a line officer, a personnel officer and a medical officer — performs the initial evaluation or “informal





board” of the MEB report. Each PEB member individually evaluates the file and makes findings as to the soldier’s fitness or unfitness with particular medical conditions and ratings for each based on the Department of Veterans Affairs’ “Schedule for Rating Disabilities.” A composite finding and recommendation is forwarded to the soldier for review and reply.

Soldiers can respond in several ways, ranging from concurring to nonconcurring with the PEB findings. They may submit additional information, escalating up to a request for a formal hearing with appointed free legal counsel and the right to present expert testimony and documentation, and the right to testify before the board. Often a soldier may disagree with a finding of “unfit” and will attempt to show that the medical condition does not preclude performance of MOS duties. Some seek to prove they are unfit or deserve higher disability ratings.

The Formal PEB is composed of at least three members, as well as a recorder who introduces the case but does not engage in any questioning. Whether it is an informal or formal PEB, it is not an adversary proceeding, but rather a fact-finding effort to enable the board to reach a fair conclusion. A formal PEB is like a sponge seeking to soak up all the knowledge it can, since up to that point the members had only clinical data forwarded by the MEB for their determination. The soldier may use the judge advocate attorney provided or pay to hire a civilian attorney.

The Formal PEB announces its findings immediately after the hearing in the presence of the soldier and counsel. The soldier also receives a verbatim record and may again consider if an appeal is warranted. Should an appeal be filed within the allotted 10 days, the PEB reconsiders its findings and forwards recommendations to the U.S. Army Physical Disability Agency for final disposition. If the USAPDA confirms or modifies the PEB findings and the soldier continues to nonconcur, the case is forwarded to the U.S. Army Physical Disability Appeal Board for final decision. Soldiers who continue to disagree with the findings may file petitions with the Army Board for the Correction of Military Records and, as a last resort, file suit in the Court of Federal Claims.

➤ Temporary or Permanent Disability?

Where a soldier is found unfit with a rating of at least 30 percent disability and the medical condition has not stabilized

for rating purposes, the soldier is placed on the Temporary Disability Retirement List with re-evaluation within 12 months or until the condition can be fairly rated. Placement on the TDRL cannot exceed five years. Soldiers who overcome their medical conditions may return to active duty from the TDRL status.

Where the unfit condition is stabilized and has a disability rating of at least a 30 percent, the soldier is permanently retired and placed on the Permanent Disability Retirement List. Disability ratings below 30 percent result in a lump-sum severance payment unless the soldier has completed 20 years of service and is retirement eligible, at which time retirement pay follows and a percentage of the pay is treated as disability compensation.

Soldiers discharged for disability may apply to the Department of Veterans Affairs for lifetime oversight to increase the ratings if their condition worsens. The agency cannot decrease the disability percentages awarded by the Army.

Soldiers being evaluated for a disability may also encounter the acronym “EPTS.” EPTS indicates that a medical condition existed prior to service but was not permanently aggravated by military duty and therefore the soldier is ineligible for disability benefits. “Presumption of Fitness” is a finding that a soldier is not entitled to benefits because a medical condition that otherwise could have been determined to make a soldier unfit did not preclude the performance of duty up to the time the soldier was processing for separation.

➤ Other Legal Considerations

The disability program has many complex aspects, that ranging from taxation to distribution of disability pay incident to divorce. People needing advice should seek help from their local legal-assistance attorneys.

